

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-4134

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 75-4134

ESTATE OF DAVID H. LEVINE, Deceased, JACOB PAUL
LEVINE and RICHARD L. LEVINE, Executors,
Appellees

v.

COMMISSIONER OF INTERNAL REVENUE,
Appellant

No. 75-4135

LILLIAN K. LEVINE,
Appellee

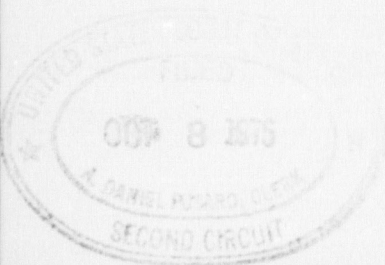
v.

COMMISSIONER OF INTERNAL REVENUE,
Appellant

ON APPEALS FROM THE DECISIONS OF THE UNITED STATES
TAX COURT

BRIEF FOR THE APPELLEES

Jon C. Blue,
Attorney for Appellees
Bergman and Barth, P.C.
900 Chapel Street
New Haven, Connecticut 06510



2

TABLE OF CONTENTS

	page
CITATIONS.....	ii
STATEMENT OF THE ISSUE PRESENTED	2
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT.....	8
ARGUMENT:	
THE TAX COURT WAS CORRECT IN HOLD- ING THAT THE ENTIRE LIFETIME INCOME INTERESTS WERE GIFTS OF PRESENT IN- TERESTS QUALIFYING FOR THE ANNUAL EXCLUSION FROM TAXABLE GIFTS.....	10
CONCLUSION	38
APPENDIX.....	40

CITATIONS

<u>CASES :</u>	page
<u>Commissioner v. Disston</u> , 325 U.S. 442 (1945).....	20
<u>Commissioner v. Thebaut</u> , 361 F.2d 428 (5th Cir. 1966).....	15, 24-25
<u>Estate of David H. Levine v. Commissioner</u> , 63 T.C. 136 (1974).....	3, 20, 26, 33-34, 36
<u>Fondren v. Commissioner</u> , 324 U.S. 18 (1945).....	14, 15, 16, 20
<u>Arlean L. Herr</u> , 35 T.C. 732 (1961), <u>aff'd</u> , 303 F.2d 780 (3rd Cir. 1962).....	15, 30, 31
<u>Mercantile-Safe Deposit & Trust Co. v.</u> <u>United States</u> , 311 F. Supp. 670 (D. Md. 1970).....	15
<u>Rollman v. United States</u> , 342 F. 2d 62 (Ct. Cl. 1965).....	25
<u>Sensbrenner v. Commissioner</u> , 134 F. 2d 883 (7th Cir. 1943).....	15
<u>United States v. Pelzer</u> , 312 U.S. 399 (1941).....	14, 16

STATUTES:

Internal Revenue Code of 1954 (26 U.S.C.):

§2501.....	25
§2503.....	<u>passim</u>
§2513.....	3
§7482.....	4

Uniform Gifts to Minors Act, Conn. Gen. Stat.

§§45-101-09.....	10
------------------	----

MISCELLANEOUS:

2 W. Blackstone, <u>Commentaries on the Laws of England</u> (4th ed. 1770).....	24
H.R. Rep. No. 708, 72d Cong., 1st Sess. (1932).....	13
H.R. Rep. No. 1337, 83d Cong., 2d Sess. (1954).....	18
Rev. Rul. 68-670, 1968-2 Cum. Bull. 413....	15
S. Rep. No. 665, 72d Cong., 1st Sess. (1932).....	14
Treas. Reg. §25.2503-3.....	14, 15

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STATEMENT OF THE ISSUE PRESENTED

Whether the Tax Court was correct in holding that lifetime income interests which were part of gifts made in trust to five minor beneficiaries were gifts of present interests qualifying for the annual exclusion from taxable gifts.

STATEMENT OF THE CASE

This case involves an appeal by the Commissioner of Internal Revenue from the decisions of the United States Tax Court (R.54,56) (per Irwin, J.) entered in these consolidated cases on the basis of an opinion reviewed by the Court. In its decisions, the Court determined that there was a deficiency in gift tax due from the petitioner Estate of David H.
¹
Levine, for the calendar year 1968 in the

1 David H. Levine died on January 26, 1973. (R. 32.) His petition in this case had pre-

amount of \$192.92 (R.54) (a deficiency which is not in question) and that there was no deficiency in gift tax due from petitioner Lillian K. Levine² for the calendar year 1968. (R.56) The opinion of the Tax Court, reported at 63 T.C. 136 (1974), held that life income interests which were part of gifts made in trust to certain minor beneficiaries were present interests under 26 U.S.C. §2503. (All statutory references herein are to the Internal Revenue Code of

1 (continued)

viously been filed in the Tax Court (R.1), and on March 2, 1973, the Tax Court granted a motion to substitute the Estate of David L. Levine, deceased, Jacob Paul Levine and Richard L. Levine, Executors, for David H. Levine as petitioner. (R.32.)

2 Lillian K. Levine is a party to this proceeding only because she consented in her gift tax return to have one-half of her husband's gifts treated as having been made by her pursuant to the gift-splitting provisions of 26 U.S.C. §2513.

1954, 26 U.S.C.) Both decisions were entered on January 14, 1975, and Appellant filed timely notices of appeal on April 11, 1975. (R.2,4.) Jurisdiction is conferred upon this Court by §7482(a). The brief for Appellant was filed on September 8, 1975.

The facts relevant to the issue presented on review were found by the Tax Court and stipulated by the parties.

On December 30, 1968, David H. Levine created separate irrevocable trusts for the benefit of five of his minor grandchildren, as follows:

<u>Beneficiary</u>	<u>Age at Date of Gift</u>
Laurie Rachel Levine	2
Lawrence Mark Levine	8
Roger Alan Levine	12
James Peter Levine	14

(R.32.) The corpus of each trust consisted of thirty shares of New Haven Moving Equipment Corp. common stock, each block of thirty shares having a value of \$3,750 at the date of the gift (R.35).

The five trusts were identical except for the designation of the grandchild-beneficiary. The sections of each trust crucial to the issue presented in this case directed the trustees to distribute the net income for the benefit of the respective grandchild in two stages:

(1) Prior to Attainment of Age Twenty-One: Until *** [the named beneficiary] shall attain the age of twenty-one (21) years, the Trustees shall accumulate and segregate the net income from the trust. The Independent Trustee may distribute to, or expend for the benefit of *** [the named beneficiary] until *** [he or she] attains the age of twenty-one (21) years, so much of the current or accumulated net income, as the Independent Trustee, in his sole discretion, shall determine. If *** [the named beneficiary] dies before attaining

the age of twenty-one (21) years, any part of the accumulated and segregated net income not distributed to *** [the named beneficiary] or expended for *** [his or her] benefit, shall be paid to *** [his or her] estate.

(2) Upon the Attainment of Age Twenty-One: Upon *** [the named beneficiary] attaining the age of twenty-one (21) years, the Trustees shall pay to *** [the named beneficiary] in a lump sum, all of the accumulated and segregated net income not yet distributed to *** [the named beneficiary] or expended for *** [his or her] benefit, and thereafter, the Trustees shall pay all of the net income from the trust to *** [the named beneficiary] during *** [his or her] lifetime, at least annually, or in more frequent convenient installments. (R.33)

The independent trustee was also given the power to pay to or for the benefit of the respective beneficiary so much of the principal of the trust as he determines in his absolute and uncontrolled discretion. The principal was additionally subject to special inter vivos and testamentary powers of appointment: After reaching the age of 21 each named beneficiary was given the power to appoint the

principal to members of the group consisting of the grantor's lineal descendants other than the beneficiary himself, his estate, his creditors, or the creditors of his estate; the testamentary power was exercisable at any time in favor of members of the same group. Upon the death of the respective beneficiary any unappointed principal was to be distributed to his estate. (R. 33-35.)

The issue presented in this case arises because, given the fact that each beneficiary was a minor at the time of the gift, payment of income to each beneficiary during his minority (this stage of the income interest is hereinafter designated the "minority income component") was necessarily subject to the independent trustee's absolute discretion, income payments being mandatory after the respective beneficiary's attainment of age

twenty-one (the "majority income component"). Appellees contend, and the Tax Court has held, that the entire lifetime income interests in these trusts were gifts of present interests in property qualifying for the \$3,000 annual exclusion under §2503. Appellant contends that only the income interests until the respective beneficiaries attain age twenty-one qualify as present interests. The status of the gifts of corpus as gifts of future interests is not in question.

SUMMARY OF ARGUMENT

The Tax Court was correct in holding that the lifetime income interests given by the five trusts in question were present interests in property qualifying for the annual exclusion from gifts. §2503(c) was enacted to allow the annual exclusion provided by §2503(b) to donors of gifts to minors if the restrictions to which

such gifts are subject cease when the donees attain the age of majority. However, a reversal of the Tax Court's decisions would disallow the annual exclusion to donors giving income interests to minors, while allowing such exclusions to donors giving income interests to donees who have attained the age of majority.

Income interests are "property" within the meaning of §2503(c). The lifetime income interests in question satisfy the requirements of that subsection since only the minority income components are subject to restrictions. These restrictions were required by the very state laws with which Congress was concerned when it enacted subsection (c). A future interest, moreover, is an interest which commences in enjoyment subsequent to a period in which no present interest exists. Under §2503(c) no part of

the minority income interests in this case is to be considered as a future interest. The trust beneficiaries will continue to enjoy present interests in income upon reaching majority, and thus have lifelong present interests in the income of their respective trusts.

ARGUMENT

THE TAX COURT WAS CORRECT IN HOLDING THAT THE ENTIRE LIFETIME INCOME INTERESTS WERE GIFTS OF PRESENT INTERESTS QUALIFYING FOR THE ANNUAL EXCLUSION FROM TAXABLE GIFTS.

David H. Levine gave his grandchildren lifetime interests in all of the income of their respective trusts. Since the donees were minors, he was compelled by the Uniform Gifts to Minors Act, Conn. Gen. Stat. §§45-101-09, to make payment of income during

their respective minorities subject to the discretion of a trustee--their rights to income during majority being unrestricted. Had his grandchildren attained the age of majority at the time of the gifts, the restrictions on the minority income components would have been unnecessary, and the entire lifetime income interests would unquestionably have been gifts of present interests eligible for the annual exclusion from taxable gifts provided by §2503 (b). If, to consider another alternative, he had chosen to give his minor grandchildren interests in principal rather than in income--with payments being discretionary during minority and the trust property passing to the donees when they respectively reach majority--these gifts would also have been considered gifts of present interests under §2503(b) as modified by §2503(c). Similarly, when the gifts of income interests in the

instant case are closely examined, it is apparent that they are directly analogous to such gifts of principal since the payment of income is only restricted during minority; upon majority, the trust income passes from the trust to the beneficiary without restriction. Appellant maintains, however, that the lifetime income interests received by the donees were not present interests because of the restrictions on the minority income component. This remarkable contention rests on Appellant's interpretation of the statute, but, in fact, a careful analysis of crucial statutory phrases³ in light of Congress's intent demonstrates that Appellant is in error.

3. §2503(b) and (c) are reproduced in full in the Appendix, infra.

§2503(b) provides as a general rule that a donor may annually exclude \$3,000 from gifts made to any person "other than gifts of future interests in property." The phrase "future interests in property" is not defined in the statute, but (deferring for the moment a consideration of the consequences of the §2503(c) modification) the legislative history, Treasury regulations and relevant judicial decisions make it clear that an income interest is to be classified as present or future with reference to the time at which enjoyment of it commences. §2503(b) was first enacted as part of the Revenue Bill of 1932. H.R. Rep. No. 708, 72d Cong., 1st Sess. 29 (1932), states that "[t]he term 'future interests in property' refers to any interest or estate, whether vested or contingent, limited to commence in possession or enjoyment at a future

date." Accord, S. Rep. No. 665, 72d Cong., 1st Sess. 41 (1932). Similarly, Treas. Reg. §25.2503-3(a) defines future interests as interests "which are limited to commence in use, possession or enjoyment at some future date or time." The Supreme Court adopted the Treasury's definition in United States v. Pelzer, 312 U.S. 399, 404 (1941), holding that beneficiaries with "no right to the present enjoyment of the corpus or of the income" for a ten year period had received future interests since the "use, possession, or enjoyment" of each donee was initially postponed, accord, Fondren v. Commissioner, 324 U.S. 18, 20 (1945) ("The question is ... when enjoyment begins.")

This unanimous reliance on the commencement of enjoyment has two consequences rele-

vant to the issue presented in this case. One result is unquestioned: a gift of an unrestricted income interest is a gift of a present interest in property, even though all income payments after the first are necessarily received in the future.⁴ This is simply because, as discussed in n.5 infra, an income interest is "property," and a donee with a right to receive income commencing immediately has a present interest "in property." Had David H. Levine's grandchildren been adults at the time of the transfers in question,

4. Fondren, 324 U.S. at 21; Commissioner v. Thebaut, 361 F.2d 428, 431 (5th Cir. 1966); Sensbrenner v. Commissioner, 134 F.2d 883, 885 (7th Cir. 1943); Mercantile-Safe Deposit & Trust Co. v. United States, 311 F. Supp. 670, 674 (D. Md. 1970); Arlean L. Herr, 35 T.C. 732, 736 (1961), aff'd, 303 F.2d 780 (3rd Cir. 1962); Rev. Rul. 68-670, 1968-2 Cum. Bull. 413, 414; Treas. Reg. §25.2503-3(b).

and had income payments to them initially been mandatory, he would have clearly been entitled to reduce the full amount of the lifetime income interests by the annual exclusion.

The central role of commencement of enjoyment has an additional consequence that is decisive in this case. Pelzer focused on the right to "the present enjoyment" of the trust property, 312 U.S. at 404. Similarly, Fondren used "the right to substantial present economic benefit" as a touchstone, 324 U.S. at 20. Pelzer and Fondren (both of which were decided before the enactment of §2503(c)) may thus be read as holding that, for purposes of §2503, a donee is given a future interest if, but only if, he does not have a present inter-

est immediately after transfer of the gift. Thus, if a donee is given a present interest and continues uninterruptedly to enjoy a present interest, he at no time has a future interest in the property which is the subject of the gift.

If §2503(b) were isolated from the statutory provisions surrounding it, the above considerations would be of academic interest in this case. §2503(c), however, contains an express modification of §2503(b), and an examination of it with these considerations in mind leads unavoidably to the conclusion that, for statutory purposes, the lifetime income interests given to David H. Levine's grandchildren were present interests.

§2503(c) provides that "No part of a gift to ... [a minor] shall be considered a

gift of a future interest in property for purposes of subsection (b) if [the requirements of subsection (c) are met]" (emphasis supplied). This provision, as the legislative history indicates, was enacted because state laws placing restrictions on gifts to minors effectively prevented donors from making gifts of present interests to minors, H.R. Rep. No. 1337, 83d Cong., 2d Sess. 93 (1954), and "partially relaxes the 'future interest' restriction contained in subsection (b)" to allow the annual exclusion for gifts which comport with its requirements, id. at A322. If, as is demonstrated infra, the minority income components satisfy the provisions of §2503(c), it necessarily follows that, for purposes of subsection (b), each grandchild-beneficiary enjoys a present interest between the date of transfer and his attainment of age 21. But the grandchild-beneficiary al-

so has a present interest on his 21st birthday and thereafter since he is then the recipient of mandatory income payments. (See the discussion supra.) No part of his lifetime income interest can thus be transformed into a future interest.

Appellant's brief and Judge Raum's dissent from the opinion of the Tax Court below do not adequately perceive this point. Although they primarily argue that the lifetime income interests in question fail to meet the requirements of subsection (c) - a contention discussed infra - critical points in their arguments seemingly view subsections (b) and (c) in metaphysical abstraction, stripped of any relation to each other. Thus, Appellant, after concluding that the lifetime income interests do not fall within the ambit of (c), states that they "could qualify

as a gift of a present interest, if at all, only under §2503(b), and therefore, only if the life tenant was assured of an immediate right to the income as generated." Brief for Appellant at 14. The authorities cited for this proposition are Fondren and Commissioner v. Disston, 325 U.S. 442 (1945) - cases that were decided long before the enactment of §2503(c). The explicit modification of (b) by (c) is not given a passing nod. Judge Raum's elaboration of the statement that "the minority and majority income interests, viewed as a single gift, do not satisfy the requirement of either (b) or (c)," 63 T.C. at 148, contains a similar misconception. In his attempts to fit the lifetime interests into the separate matrices of (b) and (c) he loses sight of the fact

that, in the case of gifts to minors, Congress clearly intended the two subsections to be read together; at the risk of belaboring the point, the question is whether the grandchildren-beneficiaries were given future interests under (b) as modified by (c).

The applicability of §2503(c) to the gifts of lifetime income interests is thus of central importance, and it is in regard to this issue that Appellant's approach breaks down. Appellant contends that the lifetime income interests in question do not satisfy the requirements of subsection (c), hinging a substantial portion of his argument, with demonstrable error, on his restrictive interpretation of the provision that "the property and the income therefrom" must

satisfy the requirements of (c). Although the word "property" is among the most frequently used words in his brief, his definition of the term can only be inferred from the context in which it is used, and in several places the context strongly suggests that Appellant labors under the specific delusion that "property" means "corpus." On page 8 of his brief, for example, he states that "[t]he Tax Court's construction of the statute would allow a donor to tie up property for the entire lifetime of the donee" In the instant case, however, the only property "tied up" for the donee's lifetime is the trust principal; at the donee's 21st birthday all accumulated income must be paid to him, and subsequently all income must be paid in the year in which it is generated.

The fact that the principal is "tied up" has an invidious sound but is irrelevant to this case. Appellant is thus incorrect in his attendant assertion that the trust provisions in issue fail to satisfy the requirement of (c) (1) (A) that the property "pass to the donee on his attaining the age of 21 years." The income interests here "pass" to the donees when they reach majority as fully as any unrestricted income interest passes to the recipient thereof. Similarly, on page 14, he states that the Tax Court's opinion, which "would permit a donor to tie up the principal of his gift for the entire lifetime of the donee," frustrates the Congressional intention to "permit the donee to exercise dominion and control over the property and its income at majority" (emphasis supplied). Such frus-

tration only exists if "principal" and "property" are equated, since the donees in this case have control over trust income after majority. In fact, as Appellant must at other times realize, since he concedes that the minority income components are "property,"⁵ no such equivalence exists, and the Tax Court's opinion does not frustrate Congressional intent.

5. The implicit contention that "property" means "corpus" has no basis in law. It has been clear for centuries that income may be as much an object of property as corpus. To Blackstone, for example, it was rudimentary that incorporeal rights, such as annuities or rents, issuing out of things corporate were property rights, 2 W. Blackstone, Commentaries on the Laws of England 20 (4th ed. 1770). More recently, judicial decisions considering the specific question of whether income may be "property" within the meaning of §2503 have left no doubt that the answer is in the affirmative. In Commissioner v. Thebaut, 361 F.2d 428, 431 (5th Cir. 1966), for example, Judge Wisdom, discussing the

The issue presented in this case is not whether income may be "property" but the precise identification of the portion of the income interests in question which are "property" within the meaning of §2503(c) and whether this portion meets

5 (continued) income portion of a gift of both principal and income, stated that "the language of Section 2503(c) means in this case: 'No part of [an income interest] *** shall be considered a gift of a future interest *** if [the income interest] and the income therefrom -' meet the stated conditions"; accord, Rollman v. United States, 342 F.2d 62, 67 (Ct. Cl. 1965) ("Since Section 2503 applies to all forms of gifts, it covers a transfer of property in which the property itself is income"); cf. the cases cited in n.3, supra. It is particularly clear that income may be "property" within the meaning of §2503(c) when the frequency with which the word "property" is used in Chapter 12 of the Internal Revenue Code is considered. The meaning of the term should not vary greatly from one section to another, and it is unlikely that Appellant would wish to restrict its meaning to corpus in contexts like §2501(a)(1) ("[A] tax ... is hereby imposed on the transfer of property by gift").

12

the standards of (c)(1) and (2). This portion may alternatively be the lifetime income interests or the minority income components. The result in either case is that the entire lifetime income interests are necessarily present interests under §2503(b) as modified by (c).

The Tax Court opinion below travels by the more direct of the two routes. It quite sensibly holds that the majority and minority income components "should be treated together [as the property], i.e., as two stages of a single income interest covering the life of the named beneficiary" 63 T.C. at 144. This entity meets the requirements of subsection (c) since: (1) the entire amount of the income interest which comes into existence before the donee's 21st birthday may be

expended by him or for his benefit, and (2) the entire income interest will to the extent not so expended (A) pass to the donee on his 21st birthday (since the income payments to the donee will thereafter be mandatory), and (B) in the event that the donee dies before attaining age 21, all unexpended accumulated net income is payable to his estate. These requirements having been met, no part of the lifetime income interests may, by operation of §2503(c), be considered to be a gift of a future interest in property for purposes of subsection (b).

Judge Raum's dissent from this approach rests on the assertion that the requirements of (c)(1) are not met since the entire life income interests cannot be expended before

the donees attain age 21. In making this argument he relies on factual and legal assumptions which are incorrect. The trusts in question gave the independent trustee explicit powers to distribute the entire trust property to the respective beneficiaries before they attain majority (R.33-34). This provision fully satisfies the requirements of (c)(1) since the independent trustee can distribute to the beneficiaries all or any part of the corpus from which the income is generated. Judge Raum's argument, moreover, misses the purpose of subsection (c). That provision was enacted to allow the annual exclusion for gifts to minors which are subject to accumulation provisions only during minority. An approach which focuses only on the narrow circumstance that the majority income com-

ponents cannot by definition be paid during minority must necessarily result in a holding that donors of lifetime income interests can only receive annual exclusions if their donees have attained the age of majority - a result diametrically opposed to that which Congress intended. This approach also places the donor of income interests at a disadvantage from which the donor of interests in principal is free. In view of the fact that, as discussed in n.5 supra, §2503 applies to all forms of gifts - to gifts of income as well as gifts of principle - it is inappropriate to frustrate Congress's intent by requiring a practical impossibility which puts gifts of income on a different footing from gifts of principal. It is far better to recognize a gift of income meets the require-

ments of §2503(c)(1) if all the income generated before a donee reaches 21 may be expended by him or for his benefit by that time.

Even if Judge Raum were correct in his argument that the lifetime income interests do not meet the requirements of (c)(1), however, it would not follow that he was also correct in asserting that they do not qualify as present interests. The minority income components alone may, in the alternative, be considered as the subsection (c) property, but the result --that the entire lifetime income interests are present interests --remains the same. The Tax Court, per Judge Raum, held in Arlean I. Herr, 35 T.C. 732, 737 (1961), aff'd, 303 F.2d 780, 782 (3d Cir. 1962), that a similar income component was "property" which satisfied the

requirements of (c)(1) and (2), and we do not understand Appellant to dispute the correctness of that decision. Judge Raum and Appellant, however, implicitly take the antecedent of the subsection (c) phrase "the property and the income therefrom" to be the "gift" that is being considered for present interest status. It is stated in Herr, for example, that "property" means "the totality of elements that go to make up the entire gift that is being considered for classification as a present interest," 35 T.C. at 736. But the statute is by no means clear on this point. It is, in fact, somewhat more natural to take the antecedent of "property" to be "part," which is the subject of the sentence, than "gift," which is locked in a prepositional phrase. If part of a gift meets the stand-

ards of (c) (1) and (2), that part cannot be considered to be a future interest for purposes of (b). We are then left to consider whether the gift as a whole qualifies as a present interest.

It is here that Judge Raum's logic fails. It is one thing to separate a gift into its component parts, one of which may qualify as a present interest. It is quite another to further divide that portion of a gift contending for present interest status into unconnected segments for purposes of the tests imposed by subsection (c) and to characterize each segment by the statutory term "gift."

The consideration of the majority income components as distinct gifts which fail to meet the standards of either (b) or (c) has a neat

logical appearance but is justified neither by the statute nor by the trust provisions in question. The majority income components are not separate "gifts"; they are merely "parts" of gifts, viz. the lifetime income interests. The trust beneficiaries in this case were, moreover, clearly given interests in all of the income of their respective trusts to be earned during their lifetimes. Part of this lifetime interest - the minority income component - is treated by subsection (c) as a present interest. Each donee will continue to enjoy a present interest when the majority income component begins. He will at no time have an interest which is not a present interest. The Tax Court was plainly correct in concluding that "by reason of §2503(c) the unrestricted right to the immediate use, possession, or enjoyment of

income in each trust begins at the date of gift and continues until death" 63 T.C. at 145.

Whether "property" is equated with "gift" or "part," however, the conclusion that the entire lifetime income interests are present interests is necessary to avoid frustration of the intention of Congress and unfair penalization of donors of gifts of income. Appellant's argument apparently turns on Congressional intent, and this intent is worth consideration. He correctly observes that Congress enacted §2503(c) because of the existence of state laws imposing disabilities on minors preventing them from exercising dominion over property. Congress intended to relax subsection (b) to allow an annual exclusion for gifts of property which are subject to the

donee's control at majority. But, as discussed supra, Appellant is in error in stating that the Tax Court's opinion goes beyond Congressional intent in allowing the "property" to be "tied up" past majority. The only gift at issue is that of the lifetime income interests. Upon reaching majority each donee has control over the income as it is generated; it is no more "tied up" at this stage than is any gift of an unrestricted income interest. Only the minority income component is subject to restrictive trust provisions, and this is necessary because of the very state laws with which Congress was concerned. The only restriction on the post-majority income is the fact that it cannot be generated all at once. But this is true of all gifts of income, and it does not make sense to use this fact to

make a gift of income ineligible for the annual exclusion for which a gift of corpus, similar in all other respects, would readily qualify.

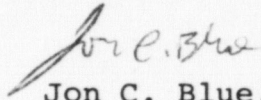
As the Tax Court recognized, a holding that the minority and majority income components should not be treated together as two stages of a single income interest would "penalize a donor who desires to give an income interest for life and in doing so takes advantage of the provisions of Section 2503(c) for the period of the beneficiary's minority." 63 T.C. at 144-145. David H. Levine gave his grandchildren rights in all of the income of their respective trusts to be generated during their lives. Had they not been minors, the lifetime income interests would clearly have qualified for the annual exclusion. Had he

chosen to give his minor grandchildren gifts of corpus, subject only to restrictive provisions during their minority, the entire gifts of corpus would have also qualified for the annual exclusion. He should not be penalized for his actual decision to give them gifts of income, similarly subject only to restrictive provisions during minority. The choice between these alternatives should make no difference so far as the gift tax law is concerned. A holding that the choice of alternatives does make a difference can only be based on an incorrect reading of the statute and would frustrate both the donor's will and the Congressional intent.

CONCLUSION

For the reasons stated, the decisions of the Tax Court in these cases should be affirmed.

Respectfully submitted,



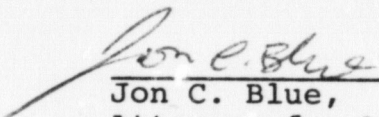
Jon C. Blue, Esquire
Bergman and Barth, P.C.
900 Chapel Street
New Haven, Connecticut
06510

October 7, 1975

CERTIFICATE OF SERVICE

It is hereby certified that service of this brief has been made on opposing counsel by mailing four copies thereof on this 7th day of October, 1975, in an envelope, with postage prepaid, properly addressed to them as follows:

Scott P. Crampton,
Assistant Attorney General,
Gilbert E. Andrews,
Jonathon S. Cohen,
Michael J. Roach,
Attorneys,
Tax Division,
U.S. Department of Justice
Washington, D.C. 20530



Jon C. Blue,
Attorney for Appellees

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 2503. TAXABLE GIFTS.

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(b) Exclusions From Gifts.-- In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year 1955 and subsequent calendar years, the first \$3,000 of such gifts to such person shall not, for purposes of subsection (a), be included in the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.

(c) Transfer for the Benefit of Minor.--No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom--

(1) may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and

(2) will to the extent not so expended--

(A) pass to the donee on his

attaining the age of 21 years, and

(B) in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c).